

UNCORRECTED PROOF

Friday, April 30, 2010 (at 12:00 o'clock noon).

Prayer was offered by the Reverend Robert F. Quinn, C.S.P., Chaplain of the House, as follows:

At the request of the Chair (Mr. Petrolati), the members, guests and employees joined with him in reciting the pledge of allegiance to the flag.

Pledge of
allegiance.

Guest of the House.

Mr. Flynn of Bridgewater then took the Chair for the purpose of introducing former Representative Chandler H. Stevens, Jr., a member of the House from 1965 to 1968, inclusive. Mr. Stevens, who was seated in the side-aisle to the right of the rostrum, had been elected to the House twice as an "Independent" from the town of Bedford. Representative Flynn remarked that Mr. Stevens was a graduate of M.I.T. and that he had been a very skilled debater during his tenure in the House.

Former
Representative
Chandler H.
Stevens, Jr.

Report of a Committee.

Mr. Binienda of Worcester, for the committee on Rules, on the Order relative to authorizing the committee on Health Care Financing to make an investigation and study of certain House documents concerning health care (House, No. 4638) reported, in part, a Bill relative to health insurance coverage for retired employees of the town of Brookline (House, No. 4451) [Local Approval Received]. Read; and referred, under Rule 7A, to the committee on Steering, Policy and Scheduling.

Brookline,—
retired
employees.

Orders of the Day.

The House Bill making appropriations for the fiscal year 2011 for the maintenance of the departments, boards, commissions, institutions and certain activities of the Commonwealth, for interest, sinking fund and serial bond requirements and for certain permanent improvements (House, No. 4600, amended) was considered.

General
Appropriation
Bill.

Pending the question on passing the bill, as amended, to be engrossed, Mr. Swan of Springfield moved that the vote be reconsidered by which the House, at the previous session, adopted an amendment (offered by Mrs. Poirier of North Attleborough and other members of the House) adding section 96; and the motion to reconsider prevailed.

After remarks on the recurring question on adoption of the amendment, Mr. Bradley of Hingham asked for a count of the House to ascertain if a quorum was present. The Chair (Mr. Petrolati of Ludlow), having determined that a quorum was not in attendance, then directed the Sergeant-at-Arms to secure the presence of a quorum.

Quorum.

Subsequently a roll call was taken for the purpose of ascertaining the presence of a quorum; and on the roll call 151 members were recorded as being in attendance.

Quorum
roll call,—
yea and nay
No. 390.

[See Yea and Nay No. 390 in Supplement.]

Therefore a quorum was present.

After debate on the recurring question on adoption of the amendment, the sense of the House was taken by yeas and nays at the request of Mr. Kaufman of Lexington; and

Amendment
adopted,—

on the roll call 94 members voted in the affirmative and 63 in the negative.

[See Yea and Nay No. 391 in Supplement.]

Therefore the amendment was adopted.

Mr. Donato of Medford being in the Chair,— Mr. Murphy of Burlington and other members then moved to amend the bill in section 2

In item 0340-1100 by adding the following “; and provided further, that funds shall be expended for the operation and management of the Berkshire County Drug Task Force”,

In item 0330-0300, in line 15, by inserting after the word “services” the following “; provided further, that notwithstanding any general or special law to the contrary, the chief justice for administration and management shall submit a report to the joint committee on the judiciary and the house and senate committees on ways and means 120 days prior to the temporary closure or temporary relocation of courthouses; and provided further, that said report shall include, but not be limited to, the transfer of personnel, the reallocation of resources, the impact on other courthouses resulting from the temporary closure of said court and other factors that may affect implementation of said temporary closure”,

By inserting after item 1599-7104 the following item:

“1599-1701 For a reserve for the state share of costs to certain municipalities and municipal lighting plants as identified by the Federal Emergency Management Agency for Emergency Declaration 3296 relating to the December 2008 severe winter storm, for the counties of Berkshire, Bristol, Essex, Franklin, Hampden, Hampshire, Middlesex, Suffolk and Worcester \$6,300,000”,

By striking out item 8324-0000 and inserting in place thereof the following item:

“8324-0000 For the administration of the department of fire services, including the state fire marshal’s office, the hazardous materials emergency response program, the board of fire prevention regulations established by section 4 of chapter 22D of the General Laws, the expenses of the fire safety commission, and the Massachusetts firefighting academy, including the Massachusetts fire training council certification program, municipal and non-municipal fire training, and expenses of the council; provided, that the fire training program shall use the split days option; provided further, that the amount allocated for programs providing information about the fire risks caused by smoking, regional dispatch centers, critical incident stress intervention programs, and fire department training academies listed in this item in chapter 182 of the acts of 2008 shall be allocated to each program in fiscal year 2011; provided further, that the amount allocated for hazardous material response teams specifically listed in this item in chapter 27 of the acts of 2009 shall be allocated to each program in fiscal year 2011; provided further, that notwithstanding any general or special law to the contrary, 100 per cent of the amount appropriated in this item for the administration of the department of fire services, the state fire marshal’s office and the Massachusetts firefighting academy, shall be assessed upon insurance companies writing fire, homeowners multiple peril or commercial multiple peril policies on property situated in the commonwealth and paid within 30 days after receipt of notice of such assessment from the commissioner of insurance; provided further, that notwithstanding any general or special law to the contrary, 100 per cent of the amount appropriated in this item for the

yea and nay
No. 391.

operation of the hazardous materials emergency response program shall be assessed upon insurance companies writing commercial multiple peril, non-liability portion, policies on property situated in the commonwealth and commercial auto liability policies as referenced in line 5.1 and line 19.4, respectively, in the most recent annual statement on file with the commissioner of insurance; and provided further, that not more than 10 per cent of the amount designated for the arson prevention program shall be expended for the administrative cost of the program..... \$16,661,169”,

By striking out item 8800-0200 and inserting in place thereof the following item:

“8800-0200 For the Radiological Emergency Response Program; provided, that the cost of the program, including associated fringe benefits and indirect costs, shall be assessed on electric companies in the commonwealth which own, in whole or in part, or purchase power from, nuclear power plants located outside the commonwealth whose nuclear power plant areas, as defined in section 2B of chapter 639 of the acts of 1950, include communities located within the commonwealth and shall be credited to the General Fund; provided further, that the amount allocated to a program or its successor listed in this item as appearing in section 2 of chapter 27 of the acts of 2009 shall be allocated to the program or its successor again and shall not be reduced by more than 25 per cent in fiscal year 2011; provided further, that the department of public utilities shall develop an equitable method of apportioning such assessments among the licensees; provided further, that such assessments shall be paid during the current fiscal year as provided by the department; and provided further, that for the purposes of this item, “electric companies” shall mean all persons, firms, associations and private corporations which own or operate works or a distributing plant for the manufacture and sale or distribution and sale of electricity within the commonwealth, but shall not include municipalities or municipal light plants \$337,003”,

By striking out item 8900-0001 and inserting in place thereof the following item:

“8900-0001 For the operation of the commonwealth’s department of correction; provided, that before closing any correctional facility, the commissioner of corrections and the secretary of public safety and homeland security shall report to the house and senate committees on ways and means and public safety on the per-inmate cost of incarceration in the closing facility, and the per-inmate cost in the facilities to which inmates will be moved; provided further, the commissioner of corrections and the secretary of public safety and homeland security shall report to the house and senate committees on ways and means and public safety before January 1 of each year the point score compiled by the department of correction’s objective classification system for all prisoners confined in each prison operated by the department; provided further, that not less than \$200,000 shall be expended for the Aid to Incarcerated Mothers Program; and provided further, that in an effort to monitor and reduce current levels of over-classification, the department of correction shall provide quarterly reports to the joint committee on public safety and the house and senate committees on ways and means with data on the number of prisoners at each security level \$505,239,805”,

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By inserting after item 8910-0445 the following two items:

“8910-0446 For the Berkshire sheriff’s department which may expend an amount not to exceed \$1,000,000 from revenues collected from the city of Pittsfield public school system; provided, that notwithstanding any general or special law to the contrary, for the purpose of accommodating timing discrepancies between the receipt of retained revenues and related expenditures, the sheriff’s office may incur expenses and the comptroller may certify for payment amounts not to exceed the lower of this authorization or the most recent revenue estimate, as reported in the state accounting system; and provided further, that expenditures from this item shall be subject to chapter 29 of the General Laws and recorded on the Massachusetts management accounting and reporting system \$1,000,000

8910-0447 For the Berkshire sheriff’s department which may expend an amount not to exceed \$50,000 to match revenues collected from the city of Pittsfield public school system for the operation of the Juvenile Resource Center; provided, that notwithstanding any general or special law to the contrary, for the purpose of accommodating timing discrepancies between the receipt of retained revenues and related expenditures, the sheriff’s office may incur expenses and the comptroller may certify for payment amounts not to exceed the lower of this authorization or the most recent revenue estimate, as reported in the state accounting system; and provided further, that expenditures from this item shall be subject to chapter 29 of the General Laws and recorded on the Massachusetts management accounting and reporting system \$50,000”;

In item 8910-1000, by striking out the figures “\$1,844,458” and inserting in place thereof the figures “\$2,005,423”;

And in item 8910-1112, by striking the figures “\$175,000” and inserting in the place thereof the figures “\$250,000”;

And by adding the following three sections:

“SECTION 97. Section 3 of chapter 32, as appearing in the 2008 Official Edition, is hereby amended by inserting after the words ‘district attorneys’, in line 300, the following words:- ; provided, however, that district attorneys elected on or after July 1, 2010 shall be employed in such capacity for 10 years or more.

SECTION 98. Section 65D of said chapter 32, as so appearing, is hereby amended by inserting after the word ‘office’, in line 5, the following words:- and a chief justice or any associate justice of the supreme judicial court.

SECTION 99. Notwithstanding any general or special law to the contrary the administrative office of the trial court shall terminate the property lease at Two Center Plaza, Tremont street in the city of Boston, effective January 1, 2011, and shall be relocated to the Charlestown division of the Boston municipal court; provided, that no funding may be expended for lease costs at Two Center Plaza, Tremont street, in the city of Boston after January 31, 2011 from any item of appropriation in the department of the trial court. The division of capital asset management shall oversee the relocation and refurbishing of the premises at Charlestown district court to accommodate offices of the administrative office of the trial court.”.

The amendments were adopted. Mr. Rush of Boston moved that this vote be reconsidered; and the motion to reconsider was negatived.

Ms. Balser of Newton then moved that the bill be amended by adding the following section:

“SECTION 100. The executive office of health and human services shall report to the general court on the implementation of chapter 257 of the acts of 2008. The report shall include information regarding: (i) how current rates for social service programs, as defined in section 22N of chapter 7 of the General Laws, reflect the various factors that the secretary of health and human services shall take into account when setting the rates pursuant to section 2A of chapter 118G of the General Laws; (ii) how the executive office has complied with said chapter 257; (iii) how the executive office determines inflation costs; (iv) the steps that the executive office is taking to set adequate rates for social service programs; (v) how the executive office has addressed the concerns raised in the executive office of health and human services report dated October 2007, entitled Financial Health of Providers in the Massachusetts Human Service System; and (vi) what regulatory changes have been or could be instituted by the executive office that would reduce costs related to the administration of social service programs. The executive office shall submit its report to the clerks of the house and senate, the house and senate committees on ways and means, the joint committee on health care financing and the joint committee on children, families and persons with disabilities not later than September 1, 2010.”.

The amendment was adopted.

Mr. Murphy of Burlington then moved that the vote be reconsidered by which the House, at the previous session, adopted an amendment (offered by Mr. Torrisi of North Andover) in section 30, in line 222, by inserting after the word “inclusive” the following “, provided that the Commonwealth Health Insurance Connector Authority, the Executive Office of Health and Human Services, and the Office of Administration and Finance make all reasonable efforts that said health insurance plan or plans authorized by this section offer patient access to those acute care hospitals, related physicians, and health centers that have historically served a large proportion of this patient population prior to fiscal year 2010”.

The motion to reconsider prevailed; and, on the recurring question, the amendment was rejected.

Mr. Hill of Ipswich and other members of the House then moved to amend the bill [A] in section 3, by inserting after the third paragraph (as printed) the following paragraph:

“Notwithstanding any general or special law to the contrary, for fiscal year 2011 the total amounts to be distributed and paid to each city and town from item 7061-0008 of section 2 shall be at a minimum 17.5 percent of their Foundation Budget; provided further, that said funds distributed shall be represented in a separate column on the cherry sheet produced by the department of revenue.”.

Pending the question on adoption of the amendment, Mrs. Haddad of Somerset moved to amend it by striking out the text of said amendment [at “A”] and inserting in place thereof the following “by adding at the end thereof the following two sections:

SECTION 101. Clause (1) of section 16 of chapter 12 of the acts of 2010 is hereby amended by inserting after the words ‘pursuant to chapter 70’ the following:- including a projection of costs associated with bringing all districts currently below their target aid levels up to those targets at equal increments and a proposed schedule to bring all districts to those target aid levels.

SECTION 102. Said section 16 of said chapter 12, as so appearing, is hereby further amended by striking out the word ‘December’, and inserting in place thereof the following word:- March.”.

After debate the further amendment was adopted, thus precluding a vote on the pending amendment.

Mr. Murphy of Burlington and other members of the House then moved to amend the bill in section 2, in item 1775-0100, by adding the following “; provided further, that not later than December 31, 2010, the division shall submit a report to the house and senate committees on ways and means and the joint committee on education on the policies, procedures and activities of the division associated with the recoupment of funds or reduction of future prices paid to approved private school programs as a result of administrative reviews conducted by the division; provided further, that the report shall include, but not be limited to the following: (i) a description of the circumstances under which the department has most commonly exercised its authority to so recoup and reduce, (ii) the correlation of recouping and reducing with the imposition of price freezes imposed on programs in recent years, (iii) the impact of recoupment actions and reductions on the efforts and ability of programs to effectively manage their budgets and maintain fiscal viability during periods of price freezes and other periods of fiscal stress, and (iv) the relationship between recoupment and price reduction activities of the division and the programmatic monitoring activities and program oversight activities of the department of elementary and secondary education”,

In item 3000-2000, by adding the following “; and provided further that voucher management, information and referral, and enhanced consumer education shall be provided by the same agency”,

In item 3000-3050, in line 9, by inserting after the word “exist” the following “ ; provided further, that funds may be used to provide services during a transition period of 6 months for families upon closure of their case”,

In item 3000-3050, by striking out the figures “\$90,286,814” and inserting in place thereof the figures “\$89,786,814”,

In item 3000-6075, by striking out the figures “\$500,000” and inserting in place thereof the figures “\$1,000,000”,

By striking out item 3000-7050 and inserting in place thereof the following item:
“3000-7050 For grants to programs that improve the early literacy, school readiness and parenting skills of participants in early education and care programs in the commonwealth, including, but not limited to, the Parent-Child Home Program and Reach Out and Read; provided, that the department shall distribute the grants no later than August 31, 2010, in order to allow a full year of service for families involved in these programs; and provided further, that the department shall, to the maximum extent feasible, coordinate services provided through this item with services provided through items 3000-6000 and 3000-7000 in order to ensure that parents receiving services through this item are aware of all opportunities available to them and their children through the department5,000,000”,

In item 7000-9401, by adding the following “; and provided further, that said section 19C of said chapter 78 shall not apply to a municipality with more than 500,000 residents during fiscal year 2011 unless such municipality funds and maintains operations for all branch libraries in service as of January 1, 2010 and funds and maintains staffing levels at its central library as such staffing levels existed on January 1, 2010”,

In item 7000-9401, by adding the following “; and provided further, that the board of library commissioners shall provide funds for the continued operation of no fewer than two regional library systems to serve the different geographic regions of the Commonwealth, one of which shall serve eastern Massachusetts and one which shall serve the western Massachusetts regional library system”,

In item 7000-9501, in line 16, by inserting after the word “program” the following “; provided further that said section 19A of said chapter 78 shall not apply to a municipality with more than 500,000 residents during fiscal year 2011 unless such municipality funds and maintains operations for all branch libraries in service as of January 1, 2010 and funds and maintains staffing levels at its central library as such staffing levels existed on January 1, 2010”,

In item 7006-0140, by adding the following “; and provided further that said section 18D of said chapter 58 shall not apply to a municipality with more than 500,000 residents during fiscal year 2011 unless such municipality funds and maintains operations for all branch libraries in service as of January 1, 2010 and funds and maintains staffing levels at its central library as such staffing levels existed on January 1, 2010”,

In item 7009-6379, by striking out the figures “\$643,603” and inserting in place thereof the figures “742,923”,

In item 7010-0005, by adding the following “; and provided further, that the department, in collaboration with the commission on gay and lesbian youth established by section 67 of chapter 3 of the General Laws, may allocate funds for programming to ensure public schools' compliance with the board of elementary and secondary education's recommendations which take into account the commission's recommendations, for the support and safety of gay and lesbian students and the implementation of related suicide and violence prevention efforts and reduction of health disparities for GLBT youth”,

In item 7010-0033, by striking out the figures “3,097,940” and inserting in place thereof the figures “2,347,940”,

By inserting after item 7010-0033 the following item:

“7030-1005 For Reading Recovery, a one-to-one, early intervention, individual tutorial literacy program designed as a pre-special education referral and short-term intervention for children who are at risk of failing to read in the first grade; provided, that said program shall provide ongoing documentation and evaluation of results.....\$750,000”,

By inserting after item 7061-9612 the following item:

“7061-9614 For the alternative education grant program established pursuant to section 1N of chapter 69 of the General Laws; provided, that the commissioner shall allocate funds for both subsections (a) and (b) of said section 1N of said chapter 69; and provided further, that no funds shall be expended for personnel costs.....\$200,000”,

In item 7061-0012, in lines 13, 14 and 15, by striking out the words “that the department shall make funds available to the department of developmental services for the voluntary residential placement prevention program administered by that department” and inserting in place thereof the following “that the department shall make no less than \$6,500,000 available to the department of developmental services for the voluntary residential placement program administered by the department”, and in said item, in lines 21 and 22, by striking out the words “for the cost of borrowing audio textbooks by special education students” and inserting in place thereof the following “for the costs of borrowing human speech audio textbooks by special education students in schools identified for improvement, corrective action or restructuring”,

In item 7061-9010, by striking out the figures “\$74,082,992” and inserting in place thereof the figures “\$71,554,914”,

In item 7061-9408, in line 84, by inserting after the word “months” the following “; provided further, that in carrying out the provisions of this item, the department may

contract with vendors that have an established record of working with schools to target and enhance middle school academic support services; provided further, that the department shall give priority to programs that have the capacity to serve not less than 25 per cent of a district's middle school population, make available documentation of a minimum of \$1 in private sector local or federal funds for every \$1 in state funds and extend the learning day for students on site in the same building where students attend school during the day by a minimum of 10 hours per school week; provided further, that said programs shall have conducted at least 1 independent longitudinal study demonstrating gains in student performance in any of the following areas: MCAS scores, school attendance, student grades or long-term high school graduation rates, teach students in groups with ratios no larger than 1 teacher to 18 students or integrate an extended school faculty which includes an on-site leader; provided further, that said program shall develop data sharing agreements and memoranda of understanding with middle schools to ensure the timely and effective sharing of grade progress and other formative or diagnostic measurements of student progress",

In item 7061-9412, in line 31, by striking out the word "evaluate" and inserting in place thereof the word "support",

In item 7061-9600, in line 7, by inserting after the word "and" the following " , in the case of students ages 18 to 19, will be limited to students with severe disabilities who", in said item, in line 36, by inserting after the word "personnel" the following "employed by the department of elementary and secondary education",

In item 7066-0009, by striking out the figures "\$346,245" and inserting in place thereof the figures "\$367,500",

In item 7077-0023, in lines 2, 3 and 4, by striking out the words "under the Massachusetts resident veterinary tuition remission plan submitted January 8, 1998," and in said item by adding the word "in consultation with Massachusetts emergency authorities", and

In item 7100-0200, in line 9, by inserting after the word "maintenance" the words "[A]; provided further, that the University of Massachusetts shall expend funds for the operation of the department of higher education's commonwealth college honors program at the University of Massachusetts Amherst, for capital lease payments from the University of Massachusetts to the Massachusetts Development Finance Agency and for annual operations of the advanced technology and manufacturing center in Fall River and for the operation of the Future of Work Research Initiative at the University of Massachusetts Labor Centers at Amherst, Boston, Dartmouth and Lowell campuses"[B];

And by adding the following three sections:

"SECTION 103. Chapter 773 of acts of 1960 is hereby amended by inserting after section 17 the following section:—

Section 17A. The Authority may indemnify and defend present and past members, officers and employees of the Authority against liabilities, claims, actions, suits, demands, judgments, reasonable costs and expenses, including reasonable legal expenses, in connection with an actual or threatened suit or proceeding, including any compromise or settlement thereof approved by the Authority, arising by reason of any act or omission of such person within the scope of such person's employment, official duties or responsibilities for the Authority; provided, however, that no indemnification shall be provided concerning a matter as to which such person acted with: (1) malice; (2) without a reasonable good faith belief that such person's conduct was in the best interest of the Authority; or (3) with the knowledge that such person's conduct was unlawful. The Authority may procure insurance for itself and for its members, officers

and employees against liabilities, losses and expenses which may be incurred by virtue of this section or otherwise.

SECTION 104. Notwithstanding any general or special law to the contrary, the department of elementary and secondary education shall develop a plan for any city or town that has enrolled more than 25 new Haitian students since January 2010 due to the crisis in Haiti. The report shall include, but not be limited to, the per pupil cost and the per pupil cost of counseling and interpretive services; provided further, that no later than December 31, 2010, the plan shall be submitted to the speaker of the house of representatives, the president of the senate, the house and senate committees on ways and means and the joint committee on education.

SECTION 105. Notwithstanding any general or special law to the contrary, Framingham State College, with the approval of the executive office for administration and finance and the board of higher education, may borrow an amount not to exceed \$10,000,000 through the Massachusetts Health and Educational Facilities Authority or any other authorized funding source for support of the division of capital asset and management-studied upgrade of science and academic facilities project[C].”.

Pending the question on adoption of the amendments, Mr. Murphy of Burlington moved to amend them in item 7100-0200, by striking out [at “A”] the following words “provided further, that the University of Massachusetts shall expend funds for the operation of the department of higher education’s commonwealth college honors program at the University of Massachusetts Amherst” and inserting in place thereof the following words “provided further, that the department of higher education’s commonwealth college honors program at the University of Massachusetts Amherst shall be operated at a funding level not less than the funding level at which it operated in fiscal year 2010”, and in item 7100-0200, by striking out [at “B”] the word “; and” and inserting in place thereof the following “ and also in said item by striking out the figures ‘\$418,671,908’ and inserting in place thereof the figures:– \$419,171,908; and”.

The further amendments were adopted.

Mr. Falzone of Saugus then moved that the amendments be amended by adding at the end of proposed section 105 by inserting after the word “project” [at “C”] the following “; provided further, that the house of representatives shall commission a study by the Legislature Library Caucus to assess the costs, benefits, and impact of changes in regional library systems in the commonwealth and to provide a recommendation on the role of the library of last recourse with regards to funding, jurisdiction and purpose”.

The further amendment was adopted; and the pending amendments, as amended, then also were adopted.

Mr. Murphy of Burlington and other members of the House then moved to amend the bill in section 2, in item 7002-0200, by striking out the figures “\$1,648,127” and inserting in place thereof the figures “\$1,770,497”,

In item 7002-0201, by striking out the figures “\$252,850” and inserting in place thereof the figures “\$452,850”,

By striking out item 7003-0702 and inserting in place thereof the following item:
“[A]7003-0702 For State Service Corps grants to be administered by the Massachusetts Service Alliance; provided, that not less than \$135,000 shall be expended for Just-A-Start Corporation to provide training for entry level employment in the biotech and medical fields for 30 unemployed, underemployed or displaced workers, or persons receiving benefits from transitional aid to families with dependent children; provided further, that not less than \$125,000 shall be expended for the Center for Women

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and Enterprise; provided further, that not less than \$250,000 shall be expended for the North Shore Alliance for Economic Development; and provided further, that not less than \$100,000 shall be expended for the Massachusetts Latino Chamber of Commerce in western Massachusetts \$1,360,000”,

In item 7004-0099, by adding the following: “; and provided further, that the department shall, on or before September 1, 2010, promulgate regulations clarifying that a household that otherwise qualifies for any preference or priority for state subsidized housing or rental assistance based on homeless or at-risk status shall retain that preference or priority notwithstanding receipt of rental assistance that is intended to be temporary, including, but not limited to, temporary or bridge subsidies provided with state funds”,

By striking out item 7004-0101 and inserting in place thereof the following item:

“7004-0101 For certain expenses of the emergency assistance program as follows: (i) contracted family shelters; (ii) transitional housing that may include temporary rental assistance and stabilization services to bridge families to permanent housing at a lesser cost than shelter; (iii) short term housing assistance; and (iv) programs to reduce or prevent homelessness; provided, that eligibility shall be limited to families with income at or below 115 per cent of the 2009 or later-issued higher federal poverty level; provided, however, that any family whose income exceeds 115 per cent of the federal poverty level while the family is receiving assistance funded by this item shall not become ineligible for assistance due to exceeding the income limit for a period of 6 months from the date that the 115 per cent level was exceeded; provided further, that the department shall establish reasonable requirements for such families to escrow a portion of their income; provided further, that any such escrowed funds shall be exempt from otherwise applicable asset limits; provided further, that the family may withdraw the amount placed in escrow upon transition to permanent housing or losing eligibility for shelter services; provided further, that benefits under this item shall be provided only to residents who are citizens of the United States or aliens lawfully admitted for permanent residence or otherwise permanently residing under color of law in the United States; provided further, that the department shall take all steps necessary to enforce regulations to prevent abuse in the emergency assistance program; provided further, that no emergency assistance expenditures shall be paid from this item unless explicitly authorized; provided further, that eligible households shall be placed in shelters as close as possible to their home community unless a household requests otherwise; provided further, that if the closest available placement is not within 20 miles of the household’s home community, the household shall be transferred to an appropriate shelter within 20 miles of its home community at the earliest possible date unless the household requests otherwise; provided further, that eligibility for shelter by an otherwise eligible family shall not be impaired by prior receipt of any non-shelter benefit; provided further, that the department shall make every effort to ensure that children receiving services from this item shall continue attending school in the community in which they lived prior to receiving services funded from this item; provided further, that should a family with a child under the

age of 4 be placed in a hotel or motel, the department of housing and community development shall ensure that the hotel or motel provides a crib for each child under the age of 4 that meets all state and federal safety codes; provided further, that notwithstanding any other general or special law to the contrary, the department shall immediately provide shelter for up to 30 days to families who appear to be eligible for such shelter based on statements provided by the family and any other information in the possession of the department but who need additional time to obtain any third-party verifications reasonably required by the department; provided further, that shelter benefits received under the preceding proviso shall not render a family ineligible under any regulation providing that a family who previously received shelter is ineligible for shelter benefits for a period of 12 months; provided further, that families receiving such shelter benefits who are found not to be eligible for continuing shelter benefits shall be eligible for aid pending a timely appeal pursuant to chapter 23B of the General Laws; provided further, that the department shall not impose unreasonable requirements for third-party verification and shall accept verifications from the family whenever reasonable; provided further, that in promulgating, amending or rescinding regulations with respect to eligibility or benefits under this program, the department shall take into account the amounts available to it for expenditure in this item so as not to exceed the amount appropriated in this item; provided further, that notwithstanding any general or special law to the contrary, 90 days before promulgating any such eligibility or benefit changes, the undersecretary shall file with the house and senate committees on ways and means and with the clerks of the house of representatives and the senate a determination by the secretary of the executive office of housing and economic development that available appropriations for the program will be insufficient to meet projected expenses and a report setting forth such proposed changes; provided further, that in fiscal year 2011, no such determination and report shall be filed prior to December 5, 2010; provided further, that all of this item shall be subject to appropriation and, in the event of a deficiency, nothing in this item shall give rise to or shall be construed as giving rise to any enforceable right or entitlement to services in excess of the amounts appropriated by this item; provided further, that the department shall report quarterly to the house and senate committees on ways and means on the emergency assistance family shelter program; provided further, that the report shall contain the same data required in item 4403-2120 of section 2 of chapter 139 of the acts of 2006 and in addition shall include the number of families served with transitional housing or short term housing assistance, the nature of such assistance provided, the average, minimum and maximum cost of such assistance, how many of the families so served required further assistance at a later date, the type of assistance later required and provided, and the current housing stability of each family who received transitional housing or short term housing assistance within the prior 18 months; and provided further, the Department of Housing and Community Development shall notify local school departments of the placement of a family in its district within

seven days of placement \$112,910,773”,

By striking out item 7004-0102 and inserting in place thereof the following item:

“7004-0102 For the department of housing and community development; provided, that the department shall, in consultation with the interagency council on housing and homelessness and 3 agencies funded under this item in fiscal year 2010 that provide services in eastern, central and western Massachusetts, respectively, conduct a study and develop recommendations to standardize shelter contract rates across each of said geographic regions to effectively combat the differences in operating requirements across the commonwealth; provided further, that the report shall be provided to the secretary of administration and finance and the chairs of the house and senate committees on ways and means no later than September 30, 2010; provided further, that funds may be expended for the continued operation of the homeless resource center; provided further, that programs that currently provide shelter may renegotiate how they will use their shelter fund, with the agreement of the department and the host cities or towns, to provide alternative services that have proven to be effective including housing first models, transitional housing and diversion away from shelters; and provided further, that funds may be expended for a 16-bed year-round nonprofit men’s shelter program for the chronically mentally ill homeless that provides individualized case management, including job search assistance \$37,643,335”,

In item 7004-0105, in line 7, by inserting after the word “shelters” the following “, including hotels and motels”,

In item 7006-0040, by adding the following: “; and provided further, that the division shall maintain and staff an office in the city of Springfield”, and

In item 7007-1000, by striking out the figures “\$2,250,000” and inserting in place thereof the figures “\$2,500,000”; and

By adding the following section:

SECTION 106. Chapter 111 of the General Laws is hereby amended by inserting after section 5A the following section:—

Section 5A ½. There is hereby established and set up on the books of the commonwealth a separate trust fund to be known as the Emergency Stockpile Trust Fund for the purpose of effectively facilitating emergency management and pandemic preparedness in accordance with section 5A. The fund shall consist of monies collected from cities, counties and other entities pursuant to this section and any income derived from the investing of amounts credited to the fund. The department shall accept funds provided by municipalities, counties, healthcare facilities and other entities for the purpose of participating in federal contracts under 42 U.S.C. §247d-6b and made available to states under 42 U.S.C. §247d-3a. All monies deposited into the trust fund shall be expended on behalf of the contributing municipalities, counties or healthcare facilities for the purchase of health care products and supplies needed for the purposes set forth in the commonwealth’s comprehensive emergency management plan and made available under contracts accessible to the commonwealth under 42 U.S.C. §247d-3a. All monies deposited into the fund shall be expended exclusively for the purposes set forth in this section.”.

Pending the question on adoption of the amendments, Mr. Murphy of Burlington moved to amend them by striking out [at “A”] proposed item 7003-0702 and inserting in place thereof the following item:

“7003-0702 For State Service Corps grants to be administered by the Massachusetts Service Alliance; provided, that not less than \$135,000 shall be expended for Just-A-Start Corporation to provide training for entry level employment in the biotech and medical fields for 30 unemployed, underemployed or displaced workers, or persons receiving benefits from transitional aid to families with dependent children; provided further, that not less than \$125,000 shall be expended for the Center for Women and Enterprise; provided further, that not less than \$400,000 shall be expended for a competitive grant program to promote the 8 regional economic development corporations, councils and partnerships across the commonwealth; provided further, that not less than \$85,000 shall be expended to the Cleantech InnoVenture Center to support biotech incubator space; and provided further, that not less than \$100,000 shall be expended for the Massachusetts Latino Chamber of Commerce in western Massachusetts \$1,595,000”.

The further amendment was adopted; and the pending amendments, as amended, then also were adopted.

Mr. Miceli of Wilmington then moved to amend the bill be amended by adding the following [A] four sections:

“SECTION 107. Chapter 265 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting after section 2 the following new section:—

Section 2A. In all cases of murder in the first degree in which the penalty of death may be authorized under section 2 of this chapter, and in which the commonwealth seeks to impose the penalty of death, the indictment or indictments shall specify which of the aggravating circumstances set forth in section 69 of chapter 279 are alleged to be present. Only so much of the indictment as alleges the offense of murder in the first degree, and not the aggravating circumstances, shall be presented to the jury during their deliberation as to the guilt or innocence of the defendant. That portion of the indictment which sets forth the aggravating circumstances shall be presented to the jury only during the presentencing proceedings in accord with section 68 of chapter 279.

SECTION 108. Chapter 279 of the General Laws, as so appearing, is hereby amended by striking section 60 and inserting in place thereof the following section:—

Section 60. The punishment of death shall be inflicted by intravenous injection of a substance or substances in a lethal quantity sufficient to cause death and until such prisoner is dead.

SECTION 109. Chapter 211D of the General Laws, as so appearing, is hereby amended by adding the following new section:—

Section 17. (a) The commonwealth shall provide legal services to: (1) any persons who are indigent and who have been charged with an offense for which capital punishment is sought; and (2) any persons who are indigent, have been sentenced to death and who seek appellate or collateral review.

(b) The committee for public counsel services shall be the appointing authority and shall appoint staff attorneys, members of the private bar or both.

(c) The appointing authority shall: (1) solicit applications from all attorneys qualified to be appointed in the proceedings specified in subsection (a)

(2) draft and at such times as it may deem necessary, but at least annually, publish rosters of all applicants determined to be qualified attorneys.

(3) draft and at such times as it may deem necessary, but at least annually, publish procedures by which attorneys shall be appointed and standards governing the

qualifications and performance of such appointed counsel. Such standards of qualification and performance shall include, but need not be limited to:

(A) membership in the bar of the commonwealth or admission to practice pro hac vice;

(B) knowledge and understanding of pertinent legal authorities regarding the issues in capital cases in general and any case to which an attorney may be appointed in particular;

(C) skills in the management and conduct of negotiations and litigation in homicide cases;

(D) skills in the investigation of homicide cases, the background of clients, and the psychiatric history and current condition of clients;

(E) skills in trial advocacy, including the interrogation of defense witnesses, cross examination, and jury arguments

(F) skills in legal research and in the writing of legal petitions, briefs, and memoranda; and

(G) skills in the analysis of legal issues bearing on capital cases;

(4) Periodically review the rosters, monitor the performance of all attorneys appointed, and delete the name of any attorney who:

(A) fails satisfactorily to complete regular training programs on the representation of clients in capital cases;

(B) fails to meet performance standards in a case to which the attorney has been appointed; or

(C) fails otherwise to demonstrate continuing competency to represent clients in capital cases;

(5) conduct or sponsor specialized training programs for attorneys representing clients in capital cases;

(6) appoint two attorneys, lead counsel and co-counsel, to represent a client in a capital case after the relevant stage of proceedings, promptly upon receiving notice of the need for the appointment from the relevant state court; and

(7) report such appointment or the client's failure to accept counsel in writing to the court requesting the appointment.

(d) Upon receipt of notice from the appointing authority that an individual entitled to the appointment of counsel under this section has declined to accept such an appointment, the court requesting the appointment shall conduct, or cause to be conducted, a hearing, at which the individual and counsel proposed to be appointed under this section shall be present, to determine the individual's competency to decline that appointment, and whether the individual has knowingly and intelligently declined it.

(e) (1) The appointing authority shall maintain 2 rosters of attorneys: one roster listing attorneys qualified to be appointed for the trial and sentencing stages of capital cases, the other listing attorneys qualified to be appointed for the appellate or collateral review stages. Each of the rosters shall be divided into two parts, one listing attorneys qualified to be appointed as lead counsel, the other listing attorneys qualified to be appointed as co-counsel.

(2) An attorney qualified to be appointed lead counsel at the trial or sentencing stages shall

(A) be a trial practitioner with at least 5 years of experience in the representation of criminal defendants in felony cases;

(B) have served as lead counsel or co-counsel at the trial or sentencing stages in at least two homicide cases tried to a jury;

(C) be familiar with the law and practice in capital cases and with the trial and sentencing procedures in the commonwealth;

(D) have completed such training or refresher courses in current developments in the representation of capital defendants at the trial or sentencing stages as the appointing authority shall require; and

(E) demonstrate the proficiency and commitment necessary to providing legal services in capital cases.

(3) An attorney qualified to be appointed co-counsel at the trial or sentencing stages shall:

(A) be a trial practitioner with at least 3 years of experience in the representation of criminal defendants in felony cases; and

(B) meet the standards in paragraphs (2)(C), (D) and (E) for lead counsel at the trial or sentencing stages.

(4) An attorney qualified to be appointed lead counsel at the appellate or collateral review stages shall:

(A) be an appellate practitioner with at least 5 years of experience in the representation of criminal clients in felony cases at the appellate or collateral review stages;

(B) have served as lead counsel or co-counsel at the appellate or collateral review stages in at least 3 cases in which the client had been convicted of a felony offense;

(C) be familiar with the law and practice in capital cases and with the appellate and collateral review procedures in the courts of the commonwealth and in federal court;

(D) have completed such training or refresher courses in current developments in the representation of capital clients at the appellate and collateral review stages as the state appointing authority shall require; and

(E) demonstrate the proficiency and commitment necessary to providing legal services in capital cases.

(5) An attorney qualified to be appointed co-counsel at the appellate, collateral or unitary review stages shall:

(A) be an appellate practitioner with at least 3 years of experience in the representation of criminal clients in felony cases at the appellate or collateral review stages; and

(B) meet the standards in paragraphs (4)(C), (D) and (E) for lead counsel at the appellate or collateral review stages.

(f) (1) Attorneys appointed from the private bar shall be:

(A) compensated for actual time and service, computed on an hourly basis and at a reasonable rate in light of the attorney's qualifications and experience and the local market for legal representation in cases reflecting the complexity and responsibility of capital cases;

(B) reimbursed for expenses reasonably incurred in the representation of the client including the costs of law clerks and paralegals reasonably needed in the representation of the client; and

(C) reimbursed for the costs of investigators and experts whose services have been approved in advance by the court and are reasonably needed in the representation of the client.

(2) Payments under subsection (f)(1):

(A) with respect to law clerks and paralegal, shall be computed on an hourly basis reflecting the local market for such services; and

(B) with respect to investigators and experts, shall be commensurate with the

schedule of fees paid by state authorities for such services.

(g) Appointed attorneys from the private bar shall receive prompt payment for legal services and reimbursement for expenses and support services upon the submission of periodic bills, receipts, or other appropriate documentation to the appointing authority or other appropriate state agency. The appointing authority shall promptly resolve any disputes with respect to such bills.

SECTION 110. Chapter 279 of the General Laws, as so appearing, is hereby amended by striking sections 68 through 71 and inserting the following new sections:—

Section 68. Upon a plea or verdict of guilty of murder committed with deliberately premeditated malice aforethought or murder with extreme atrocity or cruelty by an individual who has attained the age of 18 years at the time of the murder and who is not convicted under the provisions of the felony murder rule, in cases where the commonwealth has alleged in its indictment or indictments the presence of one or more of the aggravating circumstances set forth in section 69 of this chapter, a presentence hearing shall be conducted before the jury before which the case was tried; provided, however, that if in the opinion of the judge presiding at the presentence hearing, it is impossible or impracticable for the trial jury to sit at the presentence hearing, or if the matter of guilt was determined by a plea of guilty rather than by a jury, a new jury shall be impaneled to sit at the presentencing hearing. The selection of that jury shall be according to the laws and rules governing the selection of a jury for the trial of a capital case. A presentence hearing need not be conducted if the commonwealth determines either that it cannot prove beyond a reasonable doubt the existence of one or more of the aggravating circumstances set forth in section 69 of this chapter, or that the penalty of death should not be imposed, in which case the court shall impose the sentence of imprisonment for life as provided in section 2 of chapter 265.

During the presentence hearing, the only issue shall be the determination of the punishment to be imposed. During such hearing the jury shall hear all additional relevant evidence in mitigation of punishment including evidence relevant to any statutory mitigating circumstance set forth in paragraph (b) of section 69 of this chapter, and evidence relevant to any other aspect of the defendant's character or record or any of the circumstances of the offense that the defendant or the commonwealth may proffer as a basis for a sentence less than death, regardless of its admissibility under the rules governing the admission of evidence at criminal trials. During such hearing, the jury shall also hear such evidence in aggravation of punishment as is relevant to any statutory aggravating circumstance set forth in paragraph (a) of said section 69, and which is alleged in the indictment; provided, however, that only such evidence in aggravation of punishment as the commonwealth has made known to the defendant prior to his trial shall be admissible, and provided further, that said evidence is otherwise admissible according to the rules governing the admission of evidence at criminal trials. The jury shall also hear arguments by the defendant or his counsel or both and by the commonwealth regarding the punishment to be imposed. The commonwealth and the defendant or his counsel shall be allowed to make opening statements and closing arguments at the presentence hearing. The order of those statements and arguments and the order of presentation of evidence shall be the same as at trial.

Upon the conclusion of evidence and arguments at the presentence hearing, the court shall instruct the jury orally as to, and shall provide to the jury in writing copies of, any statutory aggravating circumstance or circumstances which are set forth in the indictment and which it determines to be warranted by the evidence. The court shall instruct the jury that it may choose to find that the penalty of death shall be imposed

upon the defendant, or it may choose not to find that the penalty of death be imposed on the defendant, but that it may not find that the penalty of death shall be imposed unless it shall first make a unanimous determination of the existence of one or more of the aggravating circumstances set forth in section 69 of this chapter and the indictment, beyond a reasonable doubt. The jury shall further be instructed that if it finds the existence of such an aggravating circumstance beyond a reasonable doubt, it must then consider all of the evidence presented to it relevant to any of the mitigating circumstances set forth in paragraph (b) of section 69 of this chapter, or to any other mitigating circumstance and determine whether, in view of all the relevant circumstances of the offense and of the defendant, the sentence shall be life imprisonment or death. The jury shall further be instructed that the penalty of death may not be imposed unless it unanimously finds after a review of all of the evidence of mitigation proffered as a basis for a sentence less than death, that the penalty of death should be imposed. If the jury is unable to reach a unanimous verdict, the court shall impose the sentence of imprisonment for life as provided in section 2 of chapter 265.

If its unanimous verdict is to impose the penalty of death, the jury shall designate in writing, signed by the foreperson of the jury, the statutory aggravating circumstance or circumstances which it unanimously found existed beyond a reasonable doubt, and that the jury after consideration of all of the evidence of mitigation relevant to the circumstances of the defendant and the offense proffered as a basis for a sentence less than death, unanimously found that the death penalty should be imposed.

After the jury has made its findings, the court shall set a sentence in accordance with section 70.

The declaration of a mistrial during the course of the presentence hearing or any error in the presentence hearing determined or otherwise shall not affect the validity of the conviction.

Section 69. (a) In all cases in which the death penalty may be authorized, the statutory aggravating circumstances are:

(1) the murder was knowingly committed on a victim because of his position as, or while engaged in the performance of his official duties as one or more of the following: police officer, special police officer, parole officer, probation officer, state or federal law enforcement officer, court officer, firefighter, officer or employee of the department of correction, officer or employee of a sheriff's department, officer or employee of a jail or officer or employee of a house of correction;

(2) the murder was committed by a defendant who was at the time incarcerated in a jail, or a correctional or penal institution, or the Massachusetts Treatment Center for the Sexually Dangerous or a facility used for the housing or treatment or housing and treatment of prisoners; or while on escape, furlough or work release from such jail, correctional or penal institution or facility;

(3) the murder was knowingly committed on a victim because of his position as, or while engaged in the performance of his official duties as a judge, prosecuting attorney, juror, or witness;

(4) the murder was committed by a defendant who had previously been convicted of murder in the first or second degree, or of an offense in any other federal, state or territorial jurisdiction of the United States which is the same as or necessarily includes the elements of the offense of murder in the first or second degree;

(5) the murder was committed by a defendant who had previously been convicted of two or more federal or state offenses, committed on different occasions, for which a sentence of life in prison or death was authorized by statute;

(6) the murder involved torture to the victim or the intentional infliction of

extreme pain prior to death demonstrating a total disregard to the suffering of the victim;

(7) the murder was committed by means of a destructive device, bomb, or explosive planted, hidden, mailed, delivered, or concealed in any place, area, dwelling, building or structure by the defendant; or the murder was committed by means such that the defendant knew or reasonably should have known that his act or acts would create a grave risk of death or serious bodily injury to more than one person; or the murder was committed by means of a machine gun or other automatic weapon;

(8) the murder occurred during the commission of or in furtherance of a violation of the drug trafficking laws of the commonwealth as set forth in section 32E of chapter 94C, or during the commission of or in furtherance of an attempt or conspiracy to violate said drug trafficking laws;

(9) the murder was committed as an act of political terrorism, which include murders committed for the purpose of attacking the government of the United States or any political subdivision thereof

(10) the murder was knowingly committed on a victim because of his position as, or while engaged in the performance of his official duties as one of the following: governor or governor-elect, lieutenant governor or lieutenant governor elect, secretary of the commonwealth, treasurer of the commonwealth, attorney general, member of the governor's council, district attorney, representative or senator in the general court or mayor .

(11) the murder was committed by means of a biological, chemical or nuclear agent or device, including but not limited to an act of terrorism

(b) In all cases in which the death penalty may be authorized, the mitigating circumstances shall be any factors proffered by the defendant or the commonwealth which are relevant in determining whether to impose a sentence less than death, including, but not limited to, any aspect of the defendant's character, propensities, or record and any of the circumstances of the murder, including but not limited to the following:

(1) the defendant has no significant history of prior criminal convictions;

(2) the victim was a co-conspirator or willing participant in the defendant's homicidal conduct, or in the criminal conduct which resulted in the murder;

(3) the murder was committed while the defendant was under extreme duress or under the domination or control of another which was insufficient to establish a defense to the murder but which substantially affected his judgment;

(4) the offense was committed while the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law was impaired as a result of: (a) a mental disease or defect; (b) organic brain damage; (c) emotional illness brought on by stress or prescribed medication; or (d) intoxication, or legal or illegal drug use by the defendant; which was insufficient to establish a defense to the murder but which substantially affected his judgment;

(5) the defendant was over the age of 75 at the time of the murder, or any other relevant consideration regarding the age of the defendant at the time of the murder;

(6) the defendant was battered or otherwise physically or sexually abused by the victim in connection with or prior to the murder for which the defendant was convicted and such abuse was a contributing factor in the murder;

(7) the defendant was experiencing post-traumatic stress syndrome caused by military service during a declared or undeclared war.

Section 70. Where a person is convicted or pleads guilty to a crime which is punishable by death, a sentence of death shall not be imposed unless findings in

accordance with section 68 are made. Further, such a sentence shall not be imposed unless the jury finds that there is conclusive scientific evidence, including physical or other associative evidence, enabling it to reach a high level of scientific certainty connecting the defendant to the crime. Physical or other associative evidence may include any tangible image, object, or item that can be independently examined for the purpose of obtaining pertinent investigative information. The jury may use the scientific, physical or other associative, evidence to corroborate the defendant's guilt and need not rely entirely on human evidence and testimony. Where such findings are made and the jury finds that the death penalty shall be imposed, the court shall sentence the defendant to death unless the court determines that a sentence of death should not be imposed under section 71. Where such findings are not made or not unanimously made or where a sentence of death is not a unanimous finding by the jury, the court shall sentence the defendant to life imprisonment as provided in section two of chapter 265.

Section 71. (a) The supreme judicial court shall establish, by rule, such reports or checklists to be utilized by the trial court, the prosecuting attorney, and defense counsel prior to, during, and after the trial of cases in which the death penalty is sought, as it deems necessary to ensure that all possible matters which could be raised in defense have been considered by the defendant and defense counsel and either asserted in a timely and correct manner or waived in accordance with applicable legal requirements, so that, for purposes of any pretrial review and the trial and post-trial review, the record and transcript of proceedings will be as complete as possible for a review by the sentencing court and the supreme judicial court of challenges to the trial, conviction, sentence and detention of the defendant.

(b) In any case in which the sentence of death has been imposed, the trial judge shall conduct a review of the entire record and shall report to the supreme Judicial court any observations which it deems pertinent to the question of the appropriateness of the sentence, including the credibility and effectiveness of mitigation evidence offered by the defense; the strength of the commonwealth's case on the merits including observations with respect to its reliance on circumstantial or eyewitness testimony and on the possibility, if any, of innocence being subsequently established, and the possibility of passion or prejudice having affected the jury's sentencing decision. If, based on the trial court's review of the record, the court determines that despite findings by the jury, the death penalty should not be imposed, the judge may set aside the sentence of death and impose a sentence of life imprisonment without parole. In such case the judges shall set forth in writing the findings and reasons which support such determination. The commonwealth shall have a right to appeal to the supreme judicial court any such determination, and the supreme judicial court may set aside said determination if it is unsupported by the record of the case, and may thereafter reimpose the penalty of death.

(c) In any case in which a sentence of death has been imposed, the trial judge may suspend for a period of time or set aside the penalty of death and impose in its place a sentence of life in prison without possibility of parole at any time, upon a showing that there is newly discovered evidence that casts substantial doubt on the justice of the conviction, or raises the substantial possibility of innocence being subsequently established, even though said evidence is not then sufficient to grant a new trial.

(d) Nothing in this section shall limit or restrict review, rights or remedies available through the procedures under Rule 30 of the Massachusetts Rules of Criminal Procedure.

Section 72. (a) In addition to a unified review procedure administered by the

supreme judicial court, the court shall conduct a formal process to ensure the independent scientific review of all scientific, physical or other associative, evidence in every capital case in which a sentence of capital punishment is imposed.

(b) The court shall create an Independent Scientific Review (ISR) Advisory Committee which shall draft policies, processes, and criterion for the ISR Panel for reviewing scientific evidence used in each capital case in which a sentence of capital punishment is imposed.

(c) Members of the ISR Advisory Committee shall be appointed by the court from a list of nominees submitted by the governor and shall be recognized experts in the evaluation of forensic evidence. If any appointed member of the committee is employed by a commonwealth crime laboratory, said member shall not participate in the review of any capital case in which said member's laboratory had involvement. The members of the committee shall appoint an independent expert panel to review each forensic-science sub-discipline relevant to each case.

(d) At the conclusion of any capital trial in which the defendant has been convicted and a sentence of capital punishment has been imposed, the ISR Committee shall appoint an ISR Panel which shall include independent members from each forensic-science sub-discipline relevant to the particular case. Members of said panel shall be selected from among recognized and accredited experts not employed by the commonwealth's state or city crime laboratories.

(e) Once selected, the ISR Panel shall conduct a thorough review of the collection, handling, evaluation, analysis, preservation, and interpretation of, and testimony and all other matters relating to scientific evidence used in the particular case. This review shall be conducted pursuant to the policies drafted and adopted by the ISR Advisory Committee. The panel review shall include, but not be limited to, an examination of the following:

(1) whether the integrity of the evidence was sufficient to allow for consideration of subsequent procedures

(2) whether appropriate guidelines and standards of practice were followed during crime scene and autopsy procedures; the recognition, documentation, recovery, packaging, and preservation of evidence; the examination and comparison of evidence; the interpretation and reporting of results; and the reconstruction by experts relying on other examinations or reports

(3) whether any new research or novel science played a role in the particular case and whether it was appropriately documented and provided for review under the relevant legal standard

(4) whether the ISR process revealed any specific scientific or technical issues requiring additional information, or suggesting that errors may have been made.

(f) A copy of the ISR Panel's report shall be provided, upon completion, to the trial judge, prosecutor, defense attorney, and the supreme judicial court.

(g) If, based on panel's review of the record, the court determines that despite findings by the jury, the death penalty should not be imposed, the judge may set aside the sentence of death and impose a sentence of life imprisonment without parole. In such case, the judges shall set forth in writing the findings and reasons which support such determination.

Section 73. In addition to a review of the entire case pursuant to section 33E of chapter 278, and section 71 of chapter 279, the supreme Judicial court shall review the sentence of death imposed pursuant to sections 68, 69, and 70 of chapter 279. If the supreme Judicial court determines that (1) the sentence of death was imposed under the influence of passion, prejudice or any other arbitrary factor; or (2) the evidence does

not support the jury's finding of a statutory aggravating circumstance or circumstances as defined in section sixty-nine; or (3) the evidence of mitigation warranted the imposition of a life sentence rather than a sentence of death; or (4) the weight of the evidence does not warrant a sentence of death the court shall (1) reverse the sentence of death and remand for a new presentence hearing pursuant to section 68 of chapter 279; or (2) reverse the sentence of death and remand to the superior court department of the trial court for sentence of imprisonment in the state prison for life. The court shall also have the authority to affirm the sentence of death.”.

Pending the question on adoption of the amendment, Mr. Bradley of Hingham moved to amend it by adding the following section:

“SECTION 111. Notwithstanding any special or general law to the contrary, the provisions of sections 107 to 110, inclusive, of this act shall not take effect until such time as the executive office of public safety and the department of corrections has furnished a study of its impact on the state’s economy and revenue cost to the commonwealth, including, but not limited to, a distributional analysis showing the impact on taxpayers or varying income levels, the current practice of other states, any anticipated change in employment and ancillary economic activity to the joint committee on the judiciary and until legislation has been filed and passed pursuant to Part 2, Chap. 1, Sec. 1, Art. II of the Constitution.”.

After debate the further amendment was adopted.

Subsequently Mr. Miceli of Wilmington asked for a count of the House to ascertain if a quorum was present. The Chair (Mr. Donato of Medford), having determined that a quorum was not in attendance, then directed the Sergeant-at-Arms to secure the presence of a quorum.

Quorum.

Subsequently a roll call was taken for the purpose of ascertaining the presence of a quorum; and on the roll call 153 members were recorded as being in attendance.

Quorum
roll call,—
yea and nay
No. 392.

[See Yea and Nay No. 392 in Supplement.]

Therefore a quorum was present.

Mr. Pedone of Worcester then moved that the vote be reconsidered by which the House adopted the further amendment (offered by Mr. Bradley of Hingham) adding section 111; and the motion to reconsider prevailed. Subsequently (Mr. Petrolati of Ludlow having been in the Chair), on the recurring question, the further amendment was rejected.

Mr. Donato of Medford being in the Chair,— Mr. Bradley of Hingham moved that the amendment be amended by striking out the text of said amendment [at “A”] and inserting in place thereof the following: “section:—

SECTION 107. There shall be established a special commission to investigate the fiscal, social, economic and judicial issues related to the adoption of capital punishment in the commonwealth. Said commission shall consist of the attorney general, the secretary of the executive office of public safety, the chief justice of the supreme judicial court and the commissioner of the department correction. Said commission shall investigate, without limitation, the fiscal, social, judicial, and economic impact of instituting capital punishment including the impact of capital punishment on the state’s economy and revenue cost to the commonwealth.”.

After debate on the question on adoption of the further amendment, the sense of the House was taken by yeas and nays at the request of Mr. Miceli of Wilmington; and on the roll call (Mr. Petrolati of Ludlow being in the Chair) 105 members voted in the affirmative and 52 in the negative.

Further
amendment
adopted,—
yea and nay
No. 393.

[See Yea and Nay No. 393 in Supplement.]

Therefore the further amendment was adopted, thus precluding a vote on the

pending amendment offered by Mr. Miceli of Wilmington.

Mr. Murphy of Burlington moved that the bill be amended in section 2, [A] in item 7006-0010, by striking out the figures “\$15,546,502” and inserting in place thereof the figures “\$12,815,333”,

By striking out item 7006-0020 and inserting in place thereof the following item:

“7006-0020 For the operation of the division of insurance, including the expenses of the board of appeal on motor vehicle policies and bonds and the associated fringe benefits costs for personnel paid from this item and certain other costs of supervising motor vehicle liability insurance and the expenses of the fraudulent claims board; provided, that the positions of counsel I and counsel II shall not be subject to chapter 31 of the General Laws; provided further, that notwithstanding any general or special law to the contrary, 100 per cent of the amount appropriated in this item, and the associated fringe costs of personnel paid from this item, shall be assessed upon the institutions which the division currently regulates under general or special laws or regulations, except for licensed business entity producers; and provided further, that the assessment shall be in addition to any and all assessments currently assessed upon the institutions \$11,458,823”,

By striking out item 7006-0071 and inserting in place thereof the following item:

“7006-0071 For the operation of the department of telecommunications and cable; provided, that notwithstanding the second sentence of section 7 of chapter 25C of the General Laws, the assessments levied for fiscal year 2011 under this section shall be made at a rate sufficient to produce 100 per cent of the amount appropriated in this item, and the associated fringe benefits costs for personnel paid from this item \$2,653,105”,

By striking out item 7006-1003 and inserting in place thereof the following item:

“7006-1003 For the operation of the department of energy resources and the residential conservation services program; provided, that the amount assessed under section 11H of chapter 25A of the General Laws shall be equal to the amount expended from this item as well as the associated fringe benefits costs for personnel paid from this item \$2,938,679”, and

By striking out item 8000-0040 and inserting in place thereof the following item:

“8000-0040 For police career incentives to reimburse certain cities and towns for career incentive salary increases for police officers; provided, however, that regular full-time members of municipal police departments hired on or after July 1, 2009 shall not be eligible to participate in the career incentive pay program established pursuant to section 108L of chapter 41 of the General Laws; provided further, that any current regular full-time member of a municipal police department who has not enrolled in an education program for the purposes of participating in the career incentive pay program pursuant to said section 108L of said chapter 41 of the General Laws, as of October 1, 2009, shall not be eligible to participate in the career incentive pay program established pursuant to said section 108L of said chapter 41 of the General Laws; provided further, that any current regular full-time member of a municipal police department who has begun to accumulate credit hours pursuant to said section 108L of said chapter 41 of the General Laws as of October 1, 2009 shall be allowed to accumulate the maximum number of credit

hours for any eligible degree permitted pursuant to said section 108L of said chapter 41 of the General Laws; provided further, that any current regular full-time member of a municipal police department on active duty in the armed forces of the United States in any theater of operations from July 1, 2008 through September 1, 2009 who enrolls in an education program for the purposes of participating in the career incentive pay program pursuant to said section 108L of said chapter 41 no later than 4 months from the date of his return from active duty shall be allowed to accumulate the maximum number of credit hours for any eligible degree permitted pursuant to said section 108L of said chapter 41; and provided further, that any permanent employee of a municipal police department appointed prior to October 1, 2009 and separated from employment pursuant to section 39 of chapter 31 of the General Laws may enroll in an education program for the purposes of participating in the career incentive pay program pursuant to said section 108L of said chapter 41 no later than 4 months from the date of his reinstatement \$5,000,000”;

And by adding the following section:

“SECTION 108. (A) Section 34 of chapter 118G of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting after the definition of ‘Health services’ the following definition:-

‘Managed Care Organization’, any managed care organization as defined by 42 CFR 438.2 and any eligible health insurance plan as defined by section 1 of chapter 118H, that contracts with MassHealth or the commonwealth health connector authority; but the term shall not include any senior care organization as defined by section 9D of chapter 118E.

(B) The definition of ‘Payments subject to surcharge’ in said section 34 of said chapter 118G, as so appearing, is hereby amended by adding the following sentence:- But the term shall include payments made by a managed care organization on behalf of (a) Medicaid recipients under age 65, and (b) enrollees in the commonwealth care health insurance program.

(C) The definition of ‘Surcharge payor’ in said section 34 of said chapter 118G, as so appearing, is hereby amended by adding the following sentence:- But the term shall include managed care organizations.

(D) Subsection (a) of section 36 of said chapter 118G, as so appearing, is hereby amended by striking out the third sentence and inserting in place thereof the following sentence:- The purposes of the fund shall be: (i) to maintain a health care safety net by reimbursing hospitals and community health centers for a portion of the cost of reimbursable health services provided to low-income, uninsured or underinsured residents of the commonwealth; and (ii) to support a portion of the costs of the Medicaid program under chapter 118E and the commonwealth care health insurance program under chapter 118H.

(E) Said section 36 of said chapter 118G, as so appearing, is hereby further amended by inserting after the word ‘hospitals’, in line 29, the following words:- ; and provided further, that any amounts collected from surcharge payors in any year in excess of \$160,000,000, adjusted to reflect applicable surcharge credits, shall be transferred to the General Fund to support a portion of the costs of the Medicaid and commonwealth care health insurance programs.

(F) Section 38 of said chapter 118G, as so appearing, is hereby amended by striking out the third and fourth sentences and inserting in place thereof the following 2

sentences:— The office shall calculate the surcharge percentage by dividing \$160,000,000 by the projected annual aggregate payments subject to the surcharge, excluding projected annual aggregate payments based on payments made by managed care organizations. The office shall determine the surcharge percentage before the start of each fund fiscal year and may redetermine the surcharge percentage before April 1 of each fund fiscal year if the office projects that the initial surcharge percentage established the previous October will produce less than \$150,000,000 or more than \$170,000,000 in surcharge payments excluding payments made by managed care organizations.”[B].

Pending the question on adoption of the amendments, Mr. Murphy of Burlington moved to amend them by inserting [at “A”] the following “in item 0337-0002, by adding the following:— ; provided that in fiscal year 2011 the department shall not reduce the amount allocated to the CASA programs as appearing in items 0337-0300, 0337-0400, 0337-0500, 0337-0600, 0337-0700, 0337-0800, 0337-0900 of section 2 of chapter 182 of the acts of 2008,

By inserting after item 1599-1977 the following item:—

1599-2009 For a reserve for Hale Hospital in the city of Haverhill.... \$1,920,000”; and by adding [at “B”] the following “; and by adding the following section:—

SECTION 109. Notwithstanding any general or special law to the contrary, the comptroller shall, no later than June 30, 2011, transfer the interest earned from the Commonwealth Stabilization Fund during fiscal year 2011 to the General Fund.”.

The further amendments were adopted; and the pending amendments, as amended then also were adopted.

Engrossed Bill — Land Taking.

There being no objection,— The engrossed Bill authorizing the city of Methuen to lease a building to the Head Start Program of the Greater Lawrence Community Action Council (see House, No. 4261, amended) (which originated in the House), having been certified by the Clerk to be rightly and truly prepared for final passage, was put upon its final passage.

On the question on passing the bill to be enacted, the sense of the House was taken by yeas and nays (this being a bill providing for the taking of land or other easements used for conservation purposes, etc., as defined by Article XCVII of the Amendments to the Constitution); and on the roll call 157 members voted in the affirmative and 0 in the negative.

[See Yeas and Nays No. 394 in Supplement.]

Therefore the bill was passed to be enacted; and it was signed by the acting Speaker and sent to the Senate.

Orders of the Day.

The House Bill making appropriations for the fiscal year 2011 for the maintenance of the departments, boards, commissions, institutions and certain activities of the Commonwealth, for interest, sinking fund and serial bond requirements and for certain permanent improvements (House, No. 4600, amended) was considered.

On the question on passing the bill, as amended, to be engrossed, the sense of the House was taken by yeas and nays at the request of Mr. Murphy of Burlington; and on the roll call (Mr. Donato of Medford being in the Chair) 132 members voted in the

Methuen,—
Head Start
Program.

Bill enacted
(land taking),—
yea and nay
No. 394.

General
Appropriation
Bill.

Bill passed to
be engrossed,—
yea and nay
No. 395.

UNCORRECTED PROOF

affirmative and 25 in the negative.

[See Yea and Nay No. 395 in Supplement.]

Therefore the bill (House, No. 4601, published as amended) was passed to be engrossed. Sent to the Senate for concurrence.

Order.

On motion of Mr. DeLeo of Winthrop,—

Ordered, That when the House adjourns today, it adjourn to meet on Tuesday next at eleven o'clock A.M.

Next
sitting.

Mr. Cabral of New Bedford then moved that as a mark of respect to the memory of Edmund Dinis, a member of the House from New Bedford in 1949 and 1950, the House adjourn; and the motion prevailed.

Accordingly, at half past six o'clock P.M. (Friday, April 30), on motion of Mr. Hill of Ipswich (Mr. Donato of Medford being in the Chair), the House adjourned, to meet the following Tuesday at eleven o'clock A.M., in an Informal Session.